

# A RIGHT TO THE INDIAN CITY? LEGAL AND POLITICAL CLAIMS OVER HOUSING AND URBAN SPACE IN INDIA

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*In Ajay Maken v Union of India, a case concerning the legality of the demolition of Shakur Basti in Delhi, a division bench of the Delhi High Court held that slum-dwellers possess the right to housing and shall be protected from forced and unannounced eviction. In arriving at its verdict, the Court invoked an idea popular in urban social movements and international law- 'The Right to the City'. But what is this Right to the City? And how is it relevant in Indian jurisprudence? This paper examines the meaning and relevance of the Right to the City and explores how it may be exercised and realized in the Indian city. It considers how the Right to the City is articulated globally in national and international legal instruments, traces the Indian jurisprudence on the right to housing, and explicates the political practices of claiming urban spaces in India. This paper argues that for the idea of the Right to the City in India to realize its potential it needs to go beyond a framework based in law and include political strategies that make claims over housing and urban spaces. It argues that the Right to the City is an inherently political and radical claim about remaking cities that challenge the rationalities of laws and masterplans. The paper hence considers both legal and political pathways for realizing the Right to the City and the Right to Housing in India.*

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## I. INTRODUCTION

On the morning of December 12, 2015, residents of *Shakur Basti* were greeted by bulldozers at their doorstep. Tinna Khan, a migrant from Bihar who ran a tea shop in *Shakur Basti*, was still making his morning tea when “four JCBs... and hundreds of policemen came with lathis”.<sup>1</sup> He quickly picked up the things of the most value from his shop to escape the demolition “but there wasn’t enough time—so the charpoy broke, and some utensils too”. Nazima Khatun, a 10-year old girl residing in *Shakur Basti* was preparing to go to school when she saw “policemen charging in with sticks and accompanying them were the bulldozers. Then they reached our house and in one swing, they turned it to rubble. I didn’t even get time to get my school bag and books.”<sup>2</sup> Within hours, the JCBs charged and razed to the ground the 1200-odd *jhuggis* of *Shakur Basti*. Over 5000 residents, including women and children, were simply rendered homeless. “Everything had finished. All my belongings, my lifelong investment in my small *jhuggi*, all vanished in front of my eyes,” laments Lalu Khan, another resident.<sup>3</sup>

*Shakur Basti* is a *jhuggi-jhopri Basti* spread across 6 hectares near the *Shakur Basti* Railway Station in western Delhi. It stood on land owned by the Indian Railways. The Railways stated that the encroachments had to be cleared for the expansion of the railway station and that multiple notices were issued to the inhabitants of the *Basti* to vacate the land.<sup>4</sup> While the Government of India defended the demolition, the Government of Delhi and opposition political parties condemned the action. The demolition of *Shakur Basti* was carried out in the peak of Delhi’s cruel biting winter, leaving its residents without shelter as the temperature slipped to 6 degree Celsius. What made it particularly ghastly was the death of a 6-month old child in the midst of the demolition exercise. This is how 27-year old Mohammad Anwar described how his infant daughter Rookia died:

When the demolition started, there was chaos. My wife noticed that a bundle of clothes had landed on my daughter. She brought her to me saying that she suspected the worst. I picked her up and rushed to Mahaveer hospital. She was still

<sup>1</sup> Atul Dev, ‘How Many Demolitions Does it Take to Break a Basti’s Spirit?’ (*The Caravan*, 30 December 2015) <<https://caravanmagazine.in/vantage/how-many-demolitions-does-it-take-to-break-a-bastis-spirit>> accessed 22 March 2020.

<sup>2</sup> Sheikh Saaliq, ‘Shakur Basti: Stories from the rubble’ *Hindustan Times* (12 December 2015) <<https://www.hindustantimes.com/static/shakurbasti-stories-from-the-rubble/index.html>> accessed 23 March 2020.

<sup>3</sup> *ibid.*

<sup>4</sup> ‘Death of Six-month-old clouds demolition drive by Railways, blame game Begins’ *Indian Express* (14 December 2015) <[indianexpress.com/article/india/india-news-india/delhi-demolition-drive-baby-dies-kejriwal-suspends-officials-suresh-prabhu-shocked/](http://indianexpress.com/article/india/india-news-india/delhi-demolition-drive-baby-dies-kejriwal-suspends-officials-suresh-prabhu-shocked/)> accessed 22 March 2020.

breathing. But when the doctor examined her, he told me that my daughter had passed away.<sup>5</sup>

A day after the demolition, which took place on a Saturday, Ajay Maken, a senior leader of the Indian National Congress and former Member of Parliament and Delhi Legislative Assembly, filed a Public Interest Litigation (PIL) before the Delhi High Court challenging the legality of the demolition. On Monday, December 14, a division bench of the High Court consisting of Justice S Muralidhar and Justice Vibhu Bakhru passed a detailed order after hearing the lawyers for the petitioner, the Railways, the Union of India, the Delhi Government, the Delhi Police, and the Delhi Urban Shelter Improvement Board (DUSIB). The High Court directed the Railways to place on record any survey carried out before the demolition as required under the Delhi High Court judgment in *Sudama Singh v Govt. of Delhi*<sup>6</sup> and further directed all the authorities to “act in coordination and in cooperation to ensure that immediate relief for rehabilitation is made available”<sup>7</sup>. The High Court subsequently directed the DUSIB to prepare the list of the persons whose *jhuggis* were demolished and made it the nodal agency to receive complaints from the displaced population.<sup>8</sup> Over the next three years, until the case was reserved for judgment on December 7, 2018, the High Court issued a set of interim orders in the form of continuing mandamus related with the administration of the survey and the provision of relief and rehabilitation for the residents of *Shakur Basti*.

On March 23, 2019, the division bench of the High Court consisting of the same judges delivered the final judgment in *Ajay Maken v Union of India*.<sup>9</sup> The judgment, authored by Justice Muralidhar, expanded on the right to housing and provided slum-dwellers constitutional protection from forced and unannounced eviction. Placing much reliance on its previous judgment in *Sudama Singh*, the Court held that no authority shall carry out an eviction without conducting a survey and consulting the population that it seeks to evict. Further, no eviction shall be carried out without providing adequate rehabilitation for those eligible for it as per the survey. The Court also observed that slum-dwellers should not be treated as encroachers or illegal occupants but as people supporting the growth of the city, forced to live in pitiable conditions due to the state’s failure in providing adequate shelter. What was particularly fascinating and unique in the judgment was that the Court invoked a particular phrase, pregnant with multiple meanings and possibilities, ‘The Right to the City’.

<sup>5</sup> Nikhil Cariappa, ‘What Big Media missed, avoided or misreported about the Shakur Basti demolition story’ (*NewsLaundry*, 18 December 2015) <<https://www.newslaundry.com/2015/12/18/what-big-media-missed-avoided-or-misreported-about-the-shakur-basti-demolition-story>> accessed 23 March 2020.

<sup>6</sup> 2010 SCC OnLine Del 612 : (2010)168 DLT 218.

<sup>7</sup> Order dated 14th December 2015, *Ajay Maken v Union of India* W.P.(C) No. 11616/2015.

<sup>8</sup> Order dated 16th December 2015, *Ajay Maken v Union of India* W.P.(C) No. 11616/2015.

<sup>9</sup> W.P.(C) No. 11616/2015.

The judgment introduces the idea of Right to the City by saying it is necessary to acknowledge that there is increasing recognition in the international sphere of what is termed as the Right to the City, which in the context of the case on hand, is an important element in the policy for rehabilitation of slum-dwellers. Though it is strictly not a legal right, an Indian court's invocation of the Right to the City, an idea with a rich history in urban social movements and international law, is momentous and merits a closer enquiry.<sup>10</sup>

In this context, it would be important to ask: What is this Right to the City? What are its various facets? How is it linked with the right to housing? Can it be enforced in a court of law? How is it relevant in Indian jurisprudence? What are the ways in which such a right can be realized?

This paper examines some of these questions and considers how a Right to the City may be exercised and realized in the Indian city. It considers how the Right to the City is articulated globally in national and international legal instruments, traces the Indian jurisprudence on the right to housing, and explicates the political practices of claiming urban spaces in India. This paper argues that for the idea of the Right to the City in India to realize its potential it needs to go beyond a framework based in law and include political strategies that make claims over housing and urban spaces. It argues that the Right to the City is an inherently political and radical claim about remaking cities that challenge the rationalities and logics of laws and masterplans. The paper hence considers both legal and political pathways for realizing the Right to the City and the Right to Housing in Indian cities.

The rest of the paper is divided into four sections. The second section discusses the concept of the Right to the City. It traces the origins and development of the idea in theory, its use in urban social movements, and its adoption in national legislations and international law. The third section examines how the jurisprudence on housing rights has evolved in India. It examines the Supreme Court judgments on the right to shelter and the PIL cases on slum demolitions in the Delhi High Court. The fourth section examines how the Right to the City is exercised as a political claim in theory and practice. It looks at political strategies beyond the law that are employed by urban poor groups in global south to realize this right. The conclusion sums up some of the key arguments of the paper and discusses the pathways for realizing the Right to the City in India.

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<sup>10</sup> The Court gave sufficient attention to the idea by having a separate section titled 'Right to the City' with 6 pages dedicated to it.

## II. THE IDEA OF THE RIGHT TO THE CITY

The Right to the City is an idea that has been gaining resonance in multiple spheres – from grassroots-level movements to national legislations to documents of international fora like UN-Habitat and UNESCO. While it is not originally a legal right which can be enforced in the court of law, it is a powerful political statement that has been employed by citizens to make claims on the city. The Right to the City was explicitly invoked in many struggles over cities and citizenships in parts of Latin America in the 80s and 90s and also more recently in political movements and public protests like the ‘Occupy Movement’.<sup>11</sup> The increasing traction of this idea in academic, activist, and policy discourses is now being reflected in law through legislations, judgments, and UN resolutions.

The Right to the City was originally conceptualized by the French philosopher and social theorist Henri Lefebvre as a radical idea of social transformation. Lefebvre wrote the short book titled *Le Droit à la ville* (The Right to the City) in 1967 for the centenary celebration of Marx’s Capital and it was published just before the Paris Uprising of May 1968.<sup>12</sup> Lefebvre describes in the book that, “the Right to the City is like a cry and a demand... a transformed and renewed right to urban life”.<sup>13</sup> The Right to the City as conceived by Lefebvre is not restricted to those formally recognized by the state as citizens but extends to all urban inhabitants. It seeks to further the interests “of the whole society and firstly of all those who inhabit”. Hence, the Right to the City is not based on nationality, ethnicity, or even citizenship, but rather on inhabitation, on the idea of people living and taking part in the routine of everyday life in the city.

According to Mark Purcell, Lefebvre’s idea of the Right to the City is not a suggestion for reform but a call for a “radical restructuring of social, political, and economic relations, both in the city and beyond”.<sup>14</sup> It seeks to restructure the prevalent power structure by shifting decision-making powers over the production of space away from the state and capital and towards all urban inhabitants. Lefebvre’s idea of the Right to the City was fundamentally based on a critique of the capitalist modes of production and notions of private property. Purcell argues that Lefebvre’s vision of the Right to the City went against the capitalist system as well as the statist bureaucratic regimes. While Lefebvre

<sup>11</sup> Alison Brown, ‘The Right to the City: Road to Rio 2010’ (2013) 37(3) International Journal of Urban and Regional Research 957; Judy Lubin, ‘The ‘Occupy’ Movement: Emerging Protest Forms and Contested Urban Spaces’ (2012) 25(1) Berkeley Planning Journal 184.

<sup>12</sup> Henri Lefebvre, *Le droit à la ville* (Anthropos: Paris 1968, vol 3).

<sup>13</sup> Henri Lefebvre, *Writings on Cities* (Blackwell, Cambridge 1996) as cited in Mark Purcell, ‘Excavating Lefebvre: The Right to the City and its Urban Politics of the Inhabitant’ (2002) 58(2-3) GeoJournal 99, 102.

<sup>14</sup> Mark Purcell, ‘Excavating Lefebvre: The Right to the City and its Urban Politics of the Inhabitant’ (2002) 58 (2-3) GeoJournal 99, 101.

recognized the necessity of the “dictatorship of the proletariat”, he disagreed with the communist party-led revolutionary state, as seen in the Soviet Union at that time.<sup>15</sup>

In the contemporary era, it was David Harvey, a critical geographer, who popularized the idea, especially in the Anglo-American world. For Harvey, the key question was, who controls access to urban resources- “Is it the financiers and developers, or the people?”<sup>16</sup> Right to the City hence became a key device for popular movements questioning neoliberal reforms and capitalistic modes of accumulation. In his landmark essay, ‘The Right to the City’, Harvey explains:

The Right to the City is far more than the individual liberty to access urban resources: it is a right to change ourselves by changing the city. It is, moreover, a common rather than an individual right since this transformation inevitably depends upon the exercise of a collective power to reshape the processes of urbanization. The freedom to make and remake our cities and ourselves is, I want to argue, one of the most precious yet most neglected of our human rights.<sup>17</sup>

Harvey’s formulation of this ‘right’ is hence essentially framed as a collective call for action, rather than an individual legal ‘right’ in the liberal democratic tradition. Right to the City has now become an important slogan and call to action for urban social movements and grassroots organizations across the globe.<sup>18</sup> It has become a common framework for articulating an alternative vision of the city and making a whole host of demands related to urban housing, evictions, inequality, gentrification, and various other concerns related to urban equity and social justice. It has also been used to make urban governance, planning, and budgeting more participative and inclusive.<sup>19</sup> The Right to the City framework has been widely influential in Latin America, particularly in Brazil. It also resonated in South Africa through the shack dwellers’ movement *Abahlali baseMjondolo*<sup>20</sup> in Durban, which protests evictions and campaigns for public housing in Cape Town where the ‘Reclaim the City’

<sup>15</sup> *ibid.*

<sup>16</sup> David Harvey, *Rebel Cities: From the Right to the City to the Urban Revolution* (Verso London 2012).

<sup>17</sup> David Harvey, ‘The Right to the City’ (2008) 53 *New Left Review* 23, 23.

<sup>18</sup> Neil Brenner and others, ‘Cities for People, Not for Profit’ (2009) 13(2-3) *City* 176; Margit Mayer, ‘The “Right to the City” in the Context of Shifting Mottos of Urban Social Movements’ (2009) 13(2-3) *City* 362.

<sup>19</sup> Wojciech Kębłowski and Mathieu Van Crieckingen, ‘How “Alternative” Alternative Urban Policies Really Are? Looking at Participatory Budgeting Through the Lenses of the Right to the City’ (2014) 15 *Métropoles* 1.

<sup>20</sup> Richard Pithouse, ‘Abahlali baseMjondolo & the Popular Struggle for the Right to the City in Durban, South Africa’ (Habitat International Coalition, Santiago, Chile, 2010) <<http://base-dph-h.info/en/fiches/dph/fiche-dph-8418.html>> accessed 21 March 2020.

movement, operating under the slogan ‘Land for People, Not for Profit!’, sought to ensure that local authorities prioritize well-located land for public housing.<sup>21</sup>

The movements for the Right to the City have also found recognition in legislative instruments. The most prominent example of a national legislation in this regard is Brazil’s City Statute of 2001. It builds on the Federal Constitution of Brazil, 1988, specifically Articles 182 and 183 which provide certain collective rights, to introduce a new legal order for land in Brazil’s cities.<sup>22</sup> The City Statute regulates the use of urban property for the collective good and loosens the notion of individual ownership of property. It privileges the social function of property over its commercial or economic function. Essentially, it gives priority to use value over exchange value and priority to possession over ownership. Further, it provides for the democratic and participatory form of urban governance by enabling the participation of various community groups “in the conception, implementation, and monitoring of urban development projects, plans, and programmes”.<sup>23</sup>

Ecuador has also invoked the idea of the Right to the City in its Constitution. Article 31 of the Constitution provides people the right to “fully enjoy the city and its public spaces on the basis of the principles of sustainability, social justice, respect for different urban cultures, and a balance between the urban and the rural”. It further states that Right to the City is based on “the democratic management of the city, on the social and environmental function of property and of the city, and on the full exercise of citizenship”.<sup>24</sup> Beyond national constitutions and legislations, various city governments have also employed the Right to the City framework in their policies.<sup>25</sup>

What has made the Right to the City more widely known is its adoption in various global and multilateral forums. A key moment was the adoption of the ‘World Charter on the Right to the City’ during the Second World Urban Forum in Porto Alegre, Brazil in 2005. The Preamble of the Charter on the Right to the City states that it is an instrument which seeks to aid the “recognition of the Right to the City in the international human rights system”. The Preamble further states that the ‘core element’ of the Right to the City is the

<sup>21</sup> Thomas Coggin, ‘Law and the New Urban Agenda: A Role for the Right to the City?’ (*Fordham Urban Law Journal: City Square*, 11 May 2018) <<https://news.law.fordham.edu/fulj/2018/05/11/thomas-coggin-law-the-new-urban-agenda-a-role-for-the-right-to-the-city/>> accessed 21 March 2020.

<sup>22</sup> Ngai Pindell, ‘Finding a Right to the City: Exploring Property and Community in Brazil and in the United States’ (2006) 39 *Vand. J. Transnat’l L.* 435; Joseli Macedo, ‘Urban Land Policy and New Land Tenure Paradigms: Legitimacy vs. Legality in Brazilian Cities’ (2008) 25(2) *Land Use Policy* 259.

<sup>23</sup> Coggin (n 21).

<sup>24</sup> Constitution of the Republic of Ecuador 2008, art 31.

<sup>25</sup> Francesca Perry, ‘Right to the City: Can this Growing Social Movement Win Over City Officials?’ *The Guardian* (Barcelona, 19 April 2016) <<https://www.theguardian.com/cities/2016/apr/19/right-city-social-movement-transforming-urban-space>> accessed 21 March 2020.



“equitable usufruct of the cities considering the principles of sustainability and social justice”.<sup>26</sup> Article 1.2 of the Charter defines the Right to the City as “the equable enjoyment of the cities while respecting the principles of sustainability, democracy and social justice, and is a collective right of all city inhabitants especially the vulnerable and disfavoured...”. The Charter further promotes the principles of public participation for the democratic management of the city, equality and non-discrimination, right to association, assembly, expression, and public information, and economic and social rights like the right to water, public services, transportation, housing, work, and environment.

Over the last decade and a half, the Right to the City idea has gained even more acceptance culminating in it becoming the core idea driving the discussions for the New Urban Agenda in the UN Conference on Housing and Sustainable Urban Development (Habitat III) held in Quito, Ecuador in 2016.<sup>27</sup> The New Urban Agenda calls for an ‘urban paradigm shift’ to readdress “the way we plan, finance, develop, govern, and manage cities and human settlements”. It emerged after two years of widespread discussions, which included three preparatory conferences, with multiple participants including scholars, civil society activists, and various levels of government.<sup>28</sup> The Habitat III process included the setting of ten policy units on the core themes with the ‘Right to the City and Cities for All’ being the first of the ten policy units. Each policy unit produced a Policy Paper which was to provide the member states of the UN a framework for adopting the ‘New Urban Agenda’.<sup>29</sup>

Policy Paper 1 on ‘Right to the City and Cities for All’ states that the Right to the City provides a “new paradigm for urban development” to address challenges like “rapid urbanization, poverty reduction, social exclusion, and environmental risk” through actions by national, regional, and local governments.<sup>30</sup> It explicates the Right to the City through three pillars: spatially just resource distribution, political agency, and social, economic, and cultural diversity. The document further examines the multiple issues within each of these pillars and proposes concrete recommendations to address these concerns. Pillar 1 covers

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<sup>26</sup> World Social Forum, ‘World Charter on the Right to the City’ <[https://www.hlrn.org.in/documents/World\\_Charter\\_on\\_the\\_Right\\_to\\_the\\_City.htm](https://www.hlrn.org.in/documents/World_Charter_on_the_Right_to_the_City.htm)> accessed 23 March 2020.

<sup>27</sup> The UN’s Habitat conferences are held in a bi-decennial cycle, with previous editions being held in Vancouver (1976) and Istanbul (1996).

<sup>28</sup> Mathew Idiculla, ‘The Relevance of the ‘New Urban Agenda’ (LiveMint, 25 October 2016) <<https://www.livemint.com/Opinion/6HIHi5nTPDPyIF0lxZNSoK/The-relevance-of-the-New-Urban-Agenda.html>> accessed 23 March 2020.

<sup>29</sup> All relevant documents on the New Urban Agenda are available at <<http://habitat3.org/the-new-urban-agenda/>>.

<sup>30</sup> United Nations Conference on Housing and Sustainable Urban Development, Habitat III Policy Papers, ‘Policy Paper 1 The Right to the City and Cities for All’ (New York, United Nations, 2017) <<http://habitat3.org/wp-content/uploads/Habitat%20III%20Policy%20Paper%201.pdf>> accessed 22 March 2020.



issues like land for housing and livelihoods, urban commons and public space, access to basic services and infrastructure, informal settlements, and climate change and disaster management. Pillar 2 discusses topics like inclusive governance, urban planning, participation, and transparency. Pillar 3 highlights the need for recognizing and embracing diversity in identity, gender, ethnicity, religion etc., and ways to create safe cities and inclusive economy.

The New Urban Agenda was adopted by representatives of the UN member states in the Habitat III Conference in Quito, Ecuador, on October 20, 2016 and further endorsed by the United Nations General Assembly on December 23, 2016. The New Urban Agenda seeks to enable “all inhabitants” the right to “inhabit and produce just, safe, healthy, accessible, affordable, resilient, and sustainable cities and human settlements”. However, while the term Right to the City was mentioned in the document, it did not receive the centrality that previous deliberations had anticipated.<sup>31</sup> The inclusion of the Right to the City framework was a major topic of contention between some of the Latin American countries which wanted it to become the centre point of the New Urban Agenda and its critics from US, EU, Russia, and India. India supported further dilution of the idea by clarifying that refugees and migrants would be eligible only “as permitted by laws of the land”.<sup>32</sup>

Instead of the Right to the City, the New Urban Agenda anchors itself behind a more generic term ‘Cities for All’ and further equated the two ideas as synonymous.<sup>33</sup> The more radical elements of the Policy Paper like the suggestions on reconsidering property rights which borrowed from the notions of the idea from Brazilian and Ecuadorian law were avoided. The idea of Cities for All promoted the broad principles of inclusivity and diversity and was used more as a rhetorical device.<sup>34</sup> So the limited invocation of the Right to the City idea in the New Urban Agenda did not propose interventions that fundamentally challenge the existing governance systems and property regimes prevalent in most cities. However, the centrality of the Right to the City narrative in the preparation stage of Habitat III has ensured that this idea got sufficient traction in the global discourse on sustainable urban development.

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<sup>31</sup> Coggin (n 21).

<sup>32</sup> Idiculla (n 28).

<sup>33</sup> Cl 11 of the New Urban Agenda states:

We share a vision of cities for all, referring to the equal use and enjoyment of cities and human settlements, seeking to promote inclusivity and ensure that all inhabitants, of present and future generations, without discrimination of any kind, are able to inhabit and produce just, safe, healthy, accessible, affordable, resilient and sustainable cities and human settlements to foster prosperity and quality of life for all. We note the efforts of some national and local governments to enshrine this vision, referred to as “Right to the City”, in their legislation, political declarations and charters.

<sup>34</sup> Coggin (n 21).

### III. INDIAN JURISPRUDENCE ON HOUSING AND EVICTIONS

In *Ajay Maken*, the Delhi High Court invoked the idea of the Right to the City to further the right to housing and protect slum-dwellers from forced evictions. In all its various articulations, ranging from urban social movements to UN resolutions, the right to housing has been a key component of the Right to the City. What makes *Ajay Maken* particularly relevant is that it marks a clear departure from much of the Delhi High Court's jurisprudence on housing rights of slum-dwellers. The Delhi High Court had, over the last two decades, taken a proactive role in adjudicating on issues related to urban planning and governance which resulted in the demolition of slums and the displacement of its inhabitants.<sup>35</sup> This case, along with *Sudama Singh* that preceded it, broke away from the trend of the Court using its PIL jurisdiction to act as the main driver of the demolition of slums and informal settlements.

The judiciary in India has a rather mixed record when it comes to questions of housing rights. The landmark case which set the broad orientation of the courts on this topic is the 1985 Supreme Court judgment in *Olga Tellis v Bombay Municipal Corpn.*<sup>36</sup> In this case, pavement and *Basti* dwellers from Mumbai challenged the action by Bombay Municipal Corporation to demolish their shelters. The Supreme Court held that "the right to livelihood is an important facet of the right to life". The Court observed that people "live in slums and on pavements because they have small jobs to nurse in the city and there is nowhere else to live... to lose the pavement or the slum is to lose the job" and the "eviction of the petitioners will lead to deprivation of their livelihood and consequently to the deprivation of life".<sup>37</sup> This judgment drew a clear connection between the right to shelter and the right to livelihood and the right to livelihood with the right to life. However, what one often ignores in this landmark judgment is that the actual relief for the petitioners was minimal since the verdict came four years after the demolition and it did not provide for any rehabilitation of those evicted.

Though it had limited immediate impact, the principles driving *Olga Tellis* helped the Court expand on the right to shelter in subsequent cases. In

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<sup>35</sup> D Asher Ghertner, 'Analysis of New Legal Discourse Behind Delhi's Slum Demolitions' (2008) 43(20) *Economic & Political Weekly* 57; D Asher Ghertner, 'Rule by Aesthetics: World-class City Making in Delhi' in Ananya Roy and Aihwa Ong (eds), *Worlding cities: Asian Experiments and the Art of Being Global* (Blackwell Publishing 2011); Gautam Bhan, 'This is No Longer the City I once Knew: Evictions, the Urban Poor and the Right to the City in Millennial Delhi' (2009) 21(1) *Environment and Urbanization* 127; Gautam Bhan, *In the Public's Interest: Evictions, Citizenship, and Inequality in Contemporary Delhi* (Orient BlackSwan 2016); Anuj Bhuwania, *Courting the People: Public Interest Litigation in Post-Emergency India* (Cambridge University Press 2017).

<sup>36</sup> (1985) 3 SCC 545.

<sup>37</sup> *ibid* [36].

*Shantistar Builders v Narayan Khimalal Totame*,<sup>38</sup> the Supreme Court held that the right to life included “right to food, the right to clothing, the right to decent environment and reasonable accommodation to live in”. Further, in *Chameli Singh v State of U.P.*,<sup>39</sup> the Supreme Court recognized the right to shelter as a component of the right to life under Article 21 and freedom of movement under Article 19(1)(e). It held that the right to shelter includes “adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc”. It further held that this right is beyond a mere “right to a roof over one’s head” but also included the “right to all the infrastructure necessary to enable them to live and develop and develop as a human being”.<sup>40</sup>

In *Ahmedabad Municipal Corpn. v Nawab Khan Gulab Khan*,<sup>41</sup> in which pavement dwellers in Ahmedabad challenged the decision of the Ahmedabad Municipal Corporation to evict them, the Supreme Court drew connections between Article 19(1)(e) of the Indian Constitution which provides for the right to movement, with Article 25(1) of the Universal Declaration of Human Rights which provides for the right to a standard of living. It held that “though no person has a right to encroach and erect structures or otherwise on footpath, pavement or public street”, the state has the constitutional duty to provide “right to shelter to the poor and indigent weaker sections of the society”.<sup>42</sup> However, even in these cases, the actual relief provided to inhabitants of slums and pavements were minimal.

The jurisprudence and the Court’s approach towards the rights of inhabitants of informal housing took a major turn at the break of the millennium. The landmark case that captures this shift is *Almitra H. Patel v Union of India*,<sup>43</sup> a PIL filed for instituting better solid waste management practices in Indian cities. While at one hand it resulted in the creation of Municipal Solid Waste (Management and Handling) Rules, the Court also went on a tangent by blaming slums for the garbage issue. The Court characterized slums as “large areas of public land, usurped for private use free of cost”. It remarked that the establishment of slums is a good business which attracts land grabbers and hence “rewarding an encroacher on public land with free alternate site is like giving a reward to a pickpocket”.

The Supreme Court observed that Delhi should be India’s ‘showpiece’ and lamented that instead of ‘slum clearance’ there is ‘slum creation’. It drew a direct link between the provision of alternate sites with the rise in “domestic

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<sup>38</sup> (1990) 1 SCC 520.

<sup>39</sup> (1996) 2 SCC 549.

<sup>40</sup> *ibid* [8].

<sup>41</sup> (1997) 11 SCC 123.

<sup>42</sup> *ibid* [13].

<sup>43</sup> (2000) 2 SCC 166.

waste being strewn on open land in and around the slums” and observed that it is “the garbage and solid waste generated by these slums which require to be dealt with most expeditiously”.<sup>44</sup> Similarly, in *Okhla Factory Owners’ Assn. v Govt. of NCT of Delhi*,<sup>45</sup> the Delhi High Court held that provision of alternate sites “only created a mafia of property developers and builders who have utilised this policy to encourage squatting on public land, get alternative sites and purchase them to make further illegal constructions.”<sup>46</sup> Such a tone can also be seen in the Supreme Court in *Hem Raj v Commr. of Police*,<sup>47</sup> where it remarked that “if encroachments on public land are to be allowed, there will be anarchy”.

These judgments set the tone for the Delhi High Court to become, what Anuj Bhuwania has called, a ‘Slum Demolition Machine’.<sup>48</sup> Bhuwania documents how the Delhi High Court in the first decade of the 21<sup>st</sup> Century used its PIL jurisdiction to preside over “the most comprehensive and ruthless slum removal campaign that the city had seen in a generation”. The trajectory of such a case would usually begin with a Resident Welfare Association (RWA) of a middle or upper-class neighbourhood filing a PIL for the removal of a nearby slum, the Court would then often proceed hearing it without making the slum-dwellers parties to the case, rely on photographic evidence, designate the slum-dwellers as encroachers, order the landowning agency to demolish the slums, and oversee the implementation of its order.<sup>49</sup>

The Delhi High Court’s handling of the case concerning Yamuna *Pushta* characterizes the Court’s activism in this issue. While considering two petitions regarding Wazirpur and Okhla in the *Okhla Factory Owners’ Association* case, the Court suddenly decided to consider ‘encroachments’ in a new location, the banks of the river Yamuna. The Court asked, “What is required to be done in the present situation in this never ending drama of illegal encroachment in this capital city of our Republic?”<sup>50</sup> It observed that the Yamuna Bed has been “encroached by unscrupulous persons with the connivance of the authorities” and directed the removal of *jhuggis* and all other unauthorized structures on the Yamuna Bed within two months. The Court appointed a lawyer as an amicus curie with a wide brief. After the demolition of Yamuna *Pushta*, the case continued whereby the Court ordered demolitions of other slums near the river Yamuna. The Court then constituted the ‘Yamuna – Removal of Encroachment Monitoring Committee’ chaired by a retired High Court Judge “to remove such encroachment forthwith and to monitor such

<sup>44</sup> *ibid* [14].

<sup>45</sup> 2002 SCC OnLine Del 1337 : (2003) 108 DLT 517.

<sup>46</sup> *ibid* [39].

<sup>47</sup> CWP 3419 of 1999.

<sup>48</sup> Bhuwania (n 35) ch 3; Anuj Bhuwania, ‘Public Interest Litigation as a Slum Demolition Machine’ (2016) 12 MIT J Plan 67.

<sup>49</sup> Ghertner, ‘Analysis of the New Legal Discourse Behind Delhi’s Slum Demolitions’ (n 35).

<sup>50</sup> Bhuwania, *Courting the People* (n 35) ch 3.

operations”. The Committee in the first year removed 11,280 structures, including 130 *dhobi ghats*, from the banks of Yamuna and due to its ‘tremendous work’ its term got extended.<sup>51</sup>

Bhuwania argues that the Yamuna case is a good example of the judicial trend of ‘omnibus PIL’, whereby the Court “turns a PIL filed about a specific problem in a specific part of the city into a PIL that deals with that particular issue wherever it comes up in the city”.<sup>52</sup> Instead of adjudicating on the issue concerning the specific site in question, the entire city of Delhi became the scale at which the Court addresses the problem. The petitioners who were concerned about a particular issue in their neighbourhood would be made irrelevant as the Court relied on an *amicus curie* or court-appointed committee to arrive at its verdict. Bhuwania argues that it is the non-procedural and arbitrary nature of PIL that enables the Court to ignore rules of adjudication and proceed with giving wide-ranging orders that affect the urban poor. It allows the Court to “initiate a case on any public issue on its own, appoint its own lawyer, introduce its own machinery to investigate the issue and then order its own solutions to the issue at the level of the entire state”.<sup>53</sup>

On examining similar cases of PIL-led evictions in Delhi, Gautam Bhan characterizes PILs as an element of ‘emergent rationalities’, a rationality or logic driven by ideas of ‘planned development’ and ‘good governance’.<sup>54</sup> It is the perceived failure of planned development as seen in the proliferation of slums and ‘illegal’ and ‘unauthorized’ occupation of land which necessitates judicial interventions in the name of ‘public interest’. Bhan notes how the poor groups who had over many years negotiated with the municipal bureaucracy and representatives to make incremental improvement of their informal housing were all of a sudden made ‘encroachers’ by a distant authority in the form of the Delhi High Court. In these cases, the Court draws a clear distinction between two classes of people – ‘citizens’, who are honest and tax-paying individuals, and ‘encroachers’ who are “unscrupulous elements in society”. As Usha Ramanathan has observed, it is in cases of evictions that ‘encroachment’ is also provided a particularly disparaging personhood by using the term ‘encroacher’.<sup>55</sup>

The Court’s jurisprudence on these issues was in many ways driven by the idea that the presence of slums prevented Delhi from being a world-class city. With the announcement made in 2003 that Delhi will host the 2010

<sup>51</sup> Ritwick Dutta, *The Unquiet River: An Overview of Select Decisions of the Courts on the River Yamuna* (PEACE Institute Charitable Trust, 2009).

<sup>52</sup> Bhuwania, *Courting the People* (n 35) 82.

<sup>53</sup> *ibid* 106.

<sup>54</sup> Bhan, *In the Public’s Interest* (n 35).

<sup>55</sup> Usha Ramanathan, ‘Illegality and the Urban Poor’ (2006) 41(29) *Economic & Political Weekly* 3193.

Commonwealth Games, the efforts to ‘clean up’ the city gathered momentum. Ghertner argues that the introduction of a new legal discourse of public nuisance allowed the court to legitimize the demolition of slums merely on the appearance of filth or unruliness.<sup>56</sup> This took place by redefining nuisance as not just specific actions but to also include individuals and groups themselves. With the expansion of the interpretation of nuisance, demolition orders did not require surveys, mapping exercises, land-use assessments, etc., but was merely required to show that the slum was on public land and constituted a ‘nuisance’. This was demonstrated by producing photographs in the courts that indicated the place was dirty and had poor environmental conditions. Ghertner calls it a “new aesthetic ordering of the city” whereby the legality of a space is “determined entirely from a distance and without requiring accurate survey or assessment”.<sup>57</sup>

This marked a clear shift away from the detailed bureaucratic procedures followed in the 1990s that involved the land-owning agencies carefully surveying, monitoring, and assessing the areas in question to determine the “duration of the slum population’s occupation of the land in question, residents’ eligibility for resettlement, the land-use category of the occupied land, and the density and size of the population settled thereupon.”<sup>58</sup> However, in the new ‘aesthetic framework’ of governance, ‘planned-ness’ was determined on the basis of “that which looks planned, regardless of its formal standing in planning law”. This framework even went beyond the logic of master plans, zoning categories, and land-use regulations as spaces were defined as “illegal or legal, deficient or normal, based on their outer characteristics”. Under this logic where courts rely heavily on photographic evidence, if a development project looks world-class then it is most often declared planned; if a settlement looks polluting, it is sanctioned as unplanned and illegal.<sup>59</sup> Hence, the aesthetic model establishes governmental legibility by examining if the territorial form of the area in question conforms to the idealized images of the world-class cities that are circulated globally.

In this context, the judgment of the Delhi High Court in *Ajay Maken*, and earlier in *Sudama Singh*, heralds a new jurisprudence on housing and evictions. *Sudama Singh* established a clear set of procedures that are to be followed by the state before and after the eviction of a slum. The Court held that a state agency can only carry out eviction for a public purpose and before such an eviction a survey must be conducted to determine eligibility of relocation. Those evicted should have “a reasonable opportunity of accessing adequate

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<sup>56</sup> Ghertner, ‘Analysis of New Legal Discourse Behind Delhi’s Slum Demolitions’ (n 35).

<sup>57</sup> Ghertner, ‘Rule by Aesthetics’ (n 35) 288; *See also*: Cases which use such a reasoning include *Jagdish v DDA* CWP 5007/2002 (Delhi High Court) and *R.L. Kaushal v Lt. Governor of Delhi* CWP 1869/2003 (Delhi High Court), as cited in Ghertner, ‘Rule by Aesthetics’.

<sup>58</sup> *ibid.*

<sup>59</sup> *ibid.*

housing within a reasonable time” and have a right to “meaningful engagement” with the relocation plans. This judgment resulted in the framing of the Delhi Slum and JJ Rehabilitation and Relocation Policy, 2015. Both *Sudama Singh* and *Ajay Maken* employ the idea of meaningful engagement from the South African Constitutional Court.<sup>60</sup> In *Occupiers of 51 Olivia Road, Berea Township v City of Johannesburg*,<sup>61</sup> the Constitutional Court observed that meaningful engagement would require that the “parties engage with each other reasonably and in good faith”. *Ajay Maken* observed that a deliberative democratic practice like meaningful engagement enabled the Court to become “both a democratic space where such dialogue can take place and also the Constitutional authority that facilitates it”. Based on a consultative engagement which included the participation of the residents of the *Shakur Basti*, civil society groups, and representatives of the government agencies, a Draft Protocol for operationalizing the 2015 Policy was framed and became the basis for rehabilitation of those evicted by the demolition.

#### IV. THE RIGHT TO THE CITY AS A POLITICAL CLAIM

In *Ajay Maken*, the Court initially discusses the meaning of the Right to the City in a broad sense and goes on to quote Upendra Baxi who argued that the Right to the City is a right “not in the sense of liberty but in the sense of power; it is an individual as well as a collective or common right; it is a right to call for, or achieve, change in our living spaces and ourselves”.<sup>62</sup> However, after this initial discussion, much of the focus is on Right to the City as a concept within international law. In the judgment, the section on Right

<sup>60</sup> *Ajay Maken* discussed the decisions of the South African Constitutional Court in *Government of the Republic of South Africa v Irene Grootboom* 2000 SCC OnLine ZACC 20 : [2000] ZACC 19; *Port Elizabeth Municipality v Various Occupiers* 2004 SCC OnLine ZACC 14 : [2004] ZACC 7; *Occupiers of 51 Olivia Road, Berea Township v City of Johannesburg* 2008 SCC OnLine ZACC 1 : [2008] ZACC 1; *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes* 2009 SCC OnLine ZACC 15 : [2009] ZACC 16; *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd.* 2011 SCC OnLine ZACC 33 : [2011] ZACC 33.

<sup>61</sup> 2008 SCC OnLine ZACC 1 : [2008] ZACC 1.

<sup>62</sup> The full quote from Upendra Baxi that was cited in the judgment is the following: The idea that the RTTC is a right to ‘change ourselves by changing the city’ needs close consideration. It is a right not in the sense of liberty but in the sense of power; it is an individual as well as collective or common right; it is a right to call for, or achieve, change in our living spaces and ourselves. However, the ‘we-ness’ for transformation is not a given but has to be constructed, forged, or fabricated if only because those who wield economic, social, and political domination aspire always towards fragmentation of the emergent ‘we-ness’. In this sense, then the RTTC is a ‘right’ to struggle for maintaining critical social solidarities. And, accordingly, such a right presupposes the respect for freedom of speech and expression, advocacy and dissent, movement and assembly, or the popular capacity to struggle to attain these. In sum, the moral RTTC assumes legal duties of respect for the conventionally called civil and political human rights.



to the City was preceded by sections on international law on right to housing which discussed provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and South African jurisprudence on the right to adequate housing. The Court relied on the policy paper in Habitat III which defined the Right to the City as the “right of all inhabitants present and future, to occupy, use and produce just, inclusive and sustainable cities, defined as a common good essential to the quality of life”.<sup>63</sup> So, the Court uses the idea primarily in the context of Habitat III and the New Urban Agenda as another international law instrument that protects housing rights.

Interestingly, the Court applies the Right to the City idea in the context of Delhi and the particular case at hand by arguing that those who live in slums “contribute to the social and economic life of a city”. It observes that slum inhabitants would include “sanitation workers, garbage collectors, domestic help, rickshaw pullers, labourers...” who cater to the basic amenities and services of the urban populations. The judgment highlights how many of them “travel long distances to reach the city to provide services, and many continue to live in deplorable conditions, suffering indignities just to make sure that the rest of the population is able to live a comfortable life”.<sup>64</sup> Hence, the Court reasons that the housing needs of such a population need to be prioritized by the state. It finally asserts that “Right to the City is an extension and an elaboration of the core elements of the right to shelter” and that the idea is implicitly acknowledged in Delhi’s 2015 Rehabilitation Policy.<sup>65</sup>

The pathways to realizing this right are, however, not restricted to law, state policy, and case-law. While the Court has understandably employed the idea of the Right to the City in a conventional legal framework, this idea has a broader frame beyond the logics of law and state order. If one takes the framework used initially by Lefebvre it becomes very clear that such a right was articulated not in the legislative or juridical framework. The Right to the City is essentially a political claim that challenges the rationalities of the law. It also challenges the dominant model of citizenship for participation, by basing it on inhabiting and not formal national citizenship. Unlike citizenship in the liberal democratic tradition where citizens have a formal voice in the decisions of the state, the Right to the City enfranchises all inhabitants the power to influence

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<sup>63</sup> From the policy paper, the judgment also cited the list of components that enable the right: (a) a city free of discrimination; (b) a city of inclusive citizenship; (c) a city with enhanced political participation in all aspects of urban planning; (d) a city ensuring equitable access for all to shelter, goods and services; (e) a city with quality public spaces for enhancing social interaction; (f) a city of gender equality; (g) a city with cultural diversity; (h) a city with inclusive economies; and, (i) a city respecting urban-rural linkages, biodiversity and natural habitats.

<sup>64</sup> *Ajay Maken* (n 9) [83].

<sup>65</sup> *Ajay Maken* (n 9) [130].

all decisions regarding the production of space, even those that are beyond the state structure.<sup>66</sup>

Examining the original idea of the Right to the City as articulated by Lefebvre, Mark Purcell argues that it constitutes two principal rights: (i) the right to participation and (ii) the right to appropriation.<sup>67</sup> The right to participation implies that urban inhabitants<sup>68</sup> play a key role in decision-making regarding the production of urban space. This decision may be made by different actors, whether it is the state or private capital, at any scale of state and corporate power, from local to global. The right to appropriation relates to the right of inhabitants to “physically access, occupy, and use urban space” which not only relates to the already existing spaces but also enables the “right to produce urban space so that it meets the needs of inhabitants”.<sup>69</sup> This right challenges the notion of urban space as a private property or a capitalist commodity and instead argues for the realization of the “full and complete usage” of space by the inhabitants, which implies that use value of urban space should always be given primacy.<sup>70</sup> Purcell argues that Lefebvre’s vision of the Right to the City seeks to transform both “liberal-democratic citizenship relations and capitalist social relations”.<sup>71</sup>

While Lefebvre had used the idea of Right to the City in the context of Europe in the 1960s, it is important to examine how such an idea takes shape in the global south in the contemporary era. James Holston’s articulation of ‘insurgent citizenship’ as an idea of the poor in the global south making claims on the city is very relevant in this regard.<sup>72</sup> Using the example of practices employed by those living in the urban peripheries in Brazil, Holston explains how the poor in the global south redefined citizenship in terms of residence and access to basic resources to improve their everyday lives. While Lefebvre conceived the Right to the City as a claim by the working classes to use and appropriate urban space, its actual practice in cities like São Paulo and Johannesburg went beyond the idea’s Marxist moorings and became a specific demand and “a right articulated within the framework of citizenship and its legal, ethical, and performative terms”.<sup>73</sup>

The notion of the Right to the City practised by insurgent citizenship challenges entrenched and differentiated forms of citizenships and provides an

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<sup>66</sup> Purcell (n 14).

<sup>67</sup> *ibid.*

<sup>68</sup> The French term used by Lefebvre is *citadins*.

<sup>69</sup> Purcell (n 14) 102.

<sup>70</sup> Henri Lefebvre, *Writings on Cities* (Blackwell Cambridge 1996).

<sup>71</sup> Purcell (n 14) 103.

<sup>72</sup> James Holston, ‘Insurgent citizenship in an era of global urban peripheries’ (2009) 21(2) *City & Society* 245; James Holston, *Insurgent Citizenship: Disjunctions of Democracy and Modernity in Brazil* (Princeton University Press 2009).

<sup>73</sup> Holston, ‘Insurgent citizenship in an era of global urban peripheries’ (n 72) 247.

alternative formulation that makes claims over the city's land, housing, and basic services through everyday practices and tactical measures. Holston argues that these practices are often by "appropriating the city's soil through some form of illegal residence and demanding legalization and legal access to resources". In the global south, these practices of appropriations are articulated as "rights of urban citizenship, the right to inhabit the city becoming a right to rights that constituted an agenda of citizenship". Holston argues that such practices make "auto-constructed metropolises" of the global south the space for developing new formulations of citizenship "based on the struggles of residents of the urban peripheries for rights to urban residence, for the right to reside with dignity, security, and mobility".<sup>74</sup>

The claims to the city made by the urban poor in India are also often in these informal and tactical modes of operation. In India, a large portion of the urban population lives outside the planned vision of the city whereby they access resources through routine violations of the law and everyday negotiations with the state.<sup>75</sup> In his classic book *The Politics of the Governed*, Partha Chatterjee makes a distinction between 'civil society' which is dominated by the urban middle class and 'political society' which consists of urban subaltern groups.<sup>76</sup> Unlike the 'civil society' which uses the language of legal rights and engages the formal arms of the state, 'political society' uses informal and paralegal negotiations in making claims on the state. The urban poor occupy vacant lands for their housing and surreptitiously and strategically gain access to services like water and electricity through various forms of negotiations with local politicians and lower bureaucracy. Chatterjee notes that the very existence of 'squatter' settlements in Indian cities is based on the violation of property laws and regulations. While the state may not formally accept these violations, it often allows it implicitly in recognition of the moral arguments based on poverty and necessity made by these communities.<sup>77</sup>

It is essentially through such political practices, which may not be strictly legal, that the urban poor in Indian cities makes claims on the city and its infrastructure and services. Solomon Benjamin conceptualizes the practice

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<sup>74</sup> *ibid* 248.

<sup>75</sup> Ananya Roy, 'Why India Cannot Plan its Cities: Informality, Insurgence and the Idiom of Urbanization' (2009) 8(1) *Planning theory* 76; Ajay Gandhi, 'Informal Moral Economies and Urban Governance in India' in Colin McFarlane and Michael Waibel (eds), *Urban Informalities: Reflections on the Formal and Informal* (Routledge 2016) 65; Colin McFarlane, 'Rethinking Informality: Politics, Crisis, and the City' (2012) 13(1) *Planning Theory & Practice* 89.

<sup>76</sup> Partha Chatterjee, *The Politics of the Governed: Reflections on Popular Politics in Most of the World* (Columbia University Press 2004).

<sup>77</sup> *ibid*; Partha Chatterjee, *Lineages of Political Society: Studies in Postcolonial Democracy* (Columbia University Press 2011); Partha Chatterjee, 'Democracy and Economic Transformation in India' (2008) 43(16) *Economic & Political Weekly* 53.

of poor groups making territorial claims as ‘occupancy urbanism’.<sup>78</sup> It can be described as “a conceptual frame for viewing city dynamics in an open-ended way, unencumbered by the anxiety of a grand narrative”.<sup>79</sup> Benjamin argues that cities are incrementally developed through the actions of multiple agents through contestations of land and location and not just through ‘hegemonic master planning’. Poor groups build complex alliances with different actors and through vote bank politics they make claims on basic infrastructure and services in return for guaranteed access to voter lists in municipal elections.<sup>80</sup> They often use the elected councillors to pressurize the administration to channel public investments into their informal settlements and work the municipal system. Such strategic manoeuvres and negotiations with state actors for appropriating urban space and services should also be seen as a practice of claiming the Right to the City.

A significant proportion of many cities in the global south, as Teresa Caldeira explains, are auto-constructed, whereby urban residents themselves build their houses and neighbourhoods, often in violation of the planning and legal norms governing that space.<sup>81</sup> They first start occupying the space and then incrementally building and obtaining the relevant urban infrastructure and services necessary for their daily lives through various means.<sup>82</sup> Through the process of ‘squatting’, the urban poor, and in some cases also members of the middle and upper classes, demand and exercise a claim over urban space and challenge the formal logic of laws and plans. This practice of claiming urban space does not neatly fit within the more sanitized global narratives on the Right to the City found in international law documents. However, in the context of India and the global south, we need to recognize that it is precisely through such claims that the Right to the City is exercised by the urban poor in their everyday lives.

In the context of India, it is also worthwhile to examine how the Right to the City may be made for urban commons. In his classic essay ‘The Tragedy of the Commons’, Garrett Hardin had explained how a shared resource is likely to be overexploited and destroyed as each individual user when they act rationally

<sup>78</sup> Solomon Benjamin, ‘Occupancy Urbanism: Radicalizing Politics and Economy beyond Policy and Programs’ (2008) 32(3) *International Journal of Urban and Regional Research* 719; Solomon Benjamin, ‘Occupancy Urbanism: Ten Theses’ (2007) *Sarai Reader 07/Frontiers* 538; Solomon Benjamin, ‘Occupancy Urbanism as Political Practice’ in Susan Parnell and Sophie Oldfield (eds), *The Routledge Handbook on Cities of the Global South* (Routledge 2014) 331, 343.

<sup>79</sup> Benjamin, ‘Occupancy Urbanism: Ten Theses’ (n 78).

<sup>80</sup> Benjamin, ‘Occupancy Urbanism: Radicalizing Politics and Economy beyond Policy and Programs’ (n 78).

<sup>81</sup> Teresa PR Caldeira, ‘Peripheral Urbanization: Auto-Construction, Transversal Logics, and Politics in Cities of the Global South’ (2017) 35(1) *Environment and Planning D: Society and Space* 3.

<sup>82</sup> Gautam Bhan, ‘Notes on a Southern Urban Practice’ (2019) 31(2) *Environment and Urbanization* 639.

and in their self-interest, act against the common good.<sup>83</sup> Based on an analysis of the degradation of water bodies in Hyderabad, Anant Maringanti argues that envisioning the Right to the City as the right to the commons challenges practices of enclosure of shared urban resources, which in India emerges out of both capitalist and caste formations.<sup>84</sup> For exercising such a right to the commons, multiple actors connected with the common resource need to come together to develop a system of collaboration where “complex repositories of information and knowledge can be brought together into conversation on a collaborative basis rather than on competitive basis”.<sup>85</sup> The Right to the City then also involves commoning practices that bring the knowledge held by various groups to allow them to become a community and make a collective claim on the city.

There can be multiple other actions and practices through which a Right to the City can be claimed including various forms of ‘reclaiming the streets’ like public rallies, road blockades, mass occupations, car-free movements, graffiti, busking, and flash mobs. In the Indian context, resisting the police’s regulatory control over the street by holding protests and public gatherings, especially by defying the denial of police permission and imposition of Section 144, are examples of the practice of reclaiming the streets. The ways of claiming and negotiating the use of public space can be through means which are legal or are at various degrees of illegality. The use of pavements by street vendors who are ubiquitous across Indian cities offer an example of how disadvantaged sections of the urban population negotiate and access public space for pursuing their right to livelihood. The interaction between street vendors and the law has multiple dimensions within and outside the provisions of the Street Vendors Act as they make legal and moral claims to use and work in these public spaces.<sup>86</sup> These actions, ranging from the occupation of the streets and conducting street vending on pavements to squatting on public lands and auto-construction of informal housing settlements, are all practices of the city’s inhabitants making claims over the use of urban spaces and thereby realizing the Right to the City.

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<sup>83</sup> Garrett Hardin, ‘The Tragedy of the Commons’ (1968) 162(3859) *Science* 1243.

<sup>84</sup> Anant Maringanti, ‘No estoppel: Claiming Right to the City Via the Commons’ (2011) 46(50) *Economic & Political Weekly* 64.

<sup>85</sup> *ibid* 69.

<sup>86</sup> Lola Salès, ‘The Street Vendors Act and the Right to Public Space in Mumbai’ (2018) 17-18 *Articulo-Journal of Urban Research* 1; Abhayraj Naik, ‘Wizards at Making Virtue of Necessity: Street Vendors in India’ (2015) 11(1) *Socio-Legal Review* 1.

## V. CONCLUSION: PATHWAYS FOR THE RIGHT TO THE INDIAN CITY

While India is increasingly becoming more urbanized, a large section of the Indian population still does not have access to adequate housing and basic services. According to the Census of India 2011, 13.7 million households (65 million individuals), which account for 17.4% of India's urban population, live in slums.<sup>87</sup> While the majority of slum households have access to water and electricity in some form, 33% of them do not have a toilet within their premises. Further, due to the absence of security of tenure, the occupants of informal settlements live with the constant threat of eviction and demolition.<sup>88</sup> In this context, the judgment of the Delhi High Court in *Ajay Maken* which provides slum-dwellers constitutional protection from forced and unannounced eviction is a landmark judicial ruling. Significantly, it places the protection from eviction within the larger framework of 'Right to Adequate Housing' and Right to the City.

The concept of Right to Adequate Housing is now well-recognized in international law and is seen by many housing rights activists as an important normative framework for furthering housing rights.<sup>89</sup> According to the UN Committee on Economic, Social and Cultural Rights, the Right to Adequate Housing includes the following: legal security of tenure, availability of services, affordability, accessibility, habitability, location, and cultural adequacy.<sup>90</sup> One of the challenges for accessing housing is the absence of any statute on the right to housing in India. While the Supreme Court has interpreted the right to life guaranteed under Article 21 to include the right to shelter, the pious pronouncements of the courts in cases like *Olga Tellis* have seldom resulted in actual relief for the slum-dwellers. In contrast, the Delhi High Court in *Ajay Maken*, through a set of continuing mandamus orders and the development of a Draft Protocol, has ensured that the residents of *Shakur Basti* are not further summarily evicted.

While the Right to the City and the Right to Adequate Housing are broad ideas which include a variety of components, given the Indian urban reality, such rights are, at the most basic level, about a right against eviction or a 'Right to Stay Put'. Chester Hartman had originally articulated the idea of a

<sup>87</sup> This includes about 5 million households in Notified Slums, 3.7 million in Recognized Slums and 5 million in Identified Slums.

<sup>88</sup> Vikram Jain, Subhash Chennuri and Ashish Karamchandani, 'Informal Housing, Inadequate Property Rights' (FSG 2016) <<https://www.fsg.org/sites/default/files/publications/Informal%20Housing%20Inadequate%20Property%20Rights.pdf>> accessed 24 March 2020.

<sup>89</sup> Miloon Kothari, Sabrina Karmali and Shivani Chaudhary, 'The Human Right to Adequate Housing and Land' (National Human Rights Commission 2006) 56.

<sup>90</sup> UN Committee on Economic, Social and Cultural Rights, 'General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)' (13 December 1991) <<https://www.refworld.org/docid/47a7079a1.html>> accessed 24 March 2020.

Right to Stay Put in opposition to displacement and gentrification to argue that urban dwellers have a right to remain in the neighbourhoods where they have resided for years.<sup>91</sup> Examining the case of Dharavi in Mumbai, Liza Weinstein explains how, despite threats of eviction and pressures for redevelopment, the residents have, through their political and bureaucratic negotiations and other activist strategies, maintained a precarious stability and won a fragile Right to Stay Put.<sup>92</sup> Hence, the ‘Right to the Indian City’ should not then be enveloped by the familiar notions of building resilient and sustainable cities, but rather be first about honouring claims to access, use, produce, live, and work in these urban spaces.

An urban resident attains a right to inhabit, use and enjoy an urban space in the Indian city often through a series of claims and practices and not through clearly delineated legal procedures. Poor groups often identify an empty and disused public land, start occupying and squatting in those, build temporary settlements and incrementally build and obtain an access to various urban infrastructure and services for the same. The Right to the Indian City, then is often exercised in violation of formal laws and master plans. After the incremental process of auto-construction of homes, poor groups further negotiate with the political and bureaucratic operators to attain some level of legality for their claims over urban space. Such negotiated manners of accessing the right to inhabit and use urban space defy the liberal legal order of property rights and strict land-use based master plans.

The Right to the City is hence a claim to inhabit, use, and enjoy urban spaces even if the basis of such a claim is not strictly legal. It fundamentally opposes the logic used by the Court in *Almitra Patel* where it observed that “rewarding an encroacher on public land with free alternate site is like giving a reward to a pickpocket”. In fact, it is based on the converse reasoning as provided in *Olga Tellis*:

No individual can barter away the freedoms conferred upon him by the Constitution. A concession made by him in a proceeding, whether under a mistake of law or otherwise, that he does not possess or will not enforce any particular fundamental right, cannot create an estoppel against him in that or any subsequent proceeding.<sup>93</sup>

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<sup>91</sup> Chester Hartman, ‘The Right to Stay Put’ in C Geisler and F Popper (eds), *Land Reform, American Style* (1984) 302, 309.

<sup>92</sup> Liza Weinstein, *The Durable Slum: Dharavi and the right to stay put in globalizing Mumbai* (Orient BlackSwan 2014).

<sup>93</sup> *Olga Tellis* (n 36) [28].



Hence, the Right to the City in this context, as Maringanti observes, is essentially a right against the application of the legal doctrine of estoppel.<sup>94</sup> Even though the pavement-dwellers may be violating the municipal law by occupying the pavement, they are still entitled to invoke the fundamental right to life to challenge the legality of their eviction from the pavement.

The violations of planning laws are however in no way restricted to the poorer groups in the city. As critics of Partha Chatterjee's characterization of 'political society' and 'civil society' have pointed out, the members of the 'civil society' also use illegal means and strategies to grab urban spaces.<sup>95</sup> In response, Chatterjee argues that these members however do not defend their actions through a moral justification of their illegal actions.<sup>96</sup> The Right to the City framed as a practice of squatting and claiming, is not a claim made on the basis of formal property rights under law, but a moral claim based on the recognition of the conditions faced by the poor and the contribution they make for the city. In *Ajay Maken*, the Court also justifies the claim of the residents of *Shakur Basti* by highlighting the contributions and sacrifices its residents make while catering to the basic amenities and services of the rest of the city. However, through such a justification, the Court here is taking a utilitarian view of justifying the rights of slum-dwellers based on their economic contributions for the city rather than asserting the inherent rights they possess over the city.

*Ajay Maken* is particularly relevant because of the history of the Delhi High Court using its PIL jurisdiction to oversee the demolition of slums. What Delhi has seen in the first decade since the break of the millennium may be characterized as the claims over the city made by 'political society' (slum residents) through political and bureaucratic negotiations confronted by the 'civil society' (middle-class RWAs) on the basis of judicial verdicts obtained through PILs. However, the argument made by Bhuwania that it is the particular nature of PILs which allows for procedural departures that resulted in slums demolitions in Delhi, is perhaps an overstatement since many of these procedural innovations can also be seen in non-PIL cases.<sup>97</sup> Further, *Ajay Maken*, a classic PIL case, shows that the same device can be used to further a deliberative exercise that involves all affected parties and result in a verdict in favour of slum inhabitants. Even the argument of Ghertner that courts use an aesthetic logic of what looks planned to determine what is legal and illegal needs to be further examined. In a recent non-PIL case, the Supreme Court in May 2019

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<sup>94</sup> Maringanti (n 84).

<sup>95</sup> Amita Baviskar and Nandini Sundar, 'Democracy versus Economic Transformation?' (2008) 43(46) *Economic & Political Weekly* 87, 89.

<sup>96</sup> Partha Chatterjee, 'Classes, Capital and Indian Democracy' (2008) 43(46) *Economic & Political Weekly* 89.

<sup>97</sup> Jayna Kothari, 'Case for Inclusive Courts' *Frontline* (21 July 2017) <<https://frontline.thehindu.com/books/case-for-inclusive-courts/article9749685.ece>> accessed 24 March 2020.

ordered the demolition of four luxurious backwater-facing high-rise apartment complexes in Kochi housing 350-odd families for violating Coastal Regulatory Zone rules.<sup>98</sup> If we go beyond a Delhi-centric analysis of the jurisprudence of evictions that focus on the issues of bias and PIL procedures, we might find that the Indian judiciary has always been inconsistent and ambiguous in its reasoning on housing and evictions.

The invocation of the Right to the City in *Ajay Maken* opens the idea to multiple opportunities both within and outside the law. At its most basic level, it provides constitutional protection for slum-dwellers against forced eviction and further provides for a right to adequate housing. The Court's reliance on international law, foreign judgments, and concepts like the Right to the City has provided a new jurisprudence for matters related to housing and evictions. By employing the concept of meaningful engagement, the Court has ensured that those affected by eviction will have a role in deciding how rehabilitation measures are carried out. This concept can be used by other Courts in issues beyond housing and eviction and hence has the potential to become an important judicial principle.

Beyond the law, the Right to the City in India is principally exercised by urban inhabitants by making claims over urban spaces, building houses, and incrementally accessing various resources connected with it. Along with these tactics of auto-construction and incremental provisioning and legalization, political claims can be made through various forms of appropriating public spaces ranging from street vending to mass occupations. The massive public protests, rallies, road blockades, agitprops, and other forms of public expression that have emerged across Indian cities and towns in opposition to the introduction of the Citizenship Amendment Act (CAA) and the National Register of Citizens (NRC) offer an example of how people can come together and lay claim over public spaces to assert their belonging in the city and the country. These movements not only offer a new form of claiming urban space but also articulate a claim of citizenship not based on legal documents but on the fact of inhabitation, of living and of sharing the quotidian habits of life.

The Right to the City, as Lefebvre argued, was never restricted to what the law and the state consider as 'citizens' but extends to all '*citadins*', all those who inhabit the city. Lefebvre's notion of the idea actually goes beyond both legal rights and informal political strategies and instead seeks to radically challenge the powers of the state and capital. While such a radical path is inherently political, the role of law in creating alternative political formulations cannot be ruled out. The example of Brazil's City Statute reveals that the

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<sup>98</sup> Mathew Idiculla, 'Climate Justice through Judicial Diktat' *The Hindu* (24 September 2019) <<https://www.thehindu.com/opinion/op-ed/climate-justice-through-judicial-diktat/article29493093.ece>> accessed 24 March 2020.

instrument of law can be used to challenge conventional notions of property rights by privileging use value over exchange value and the social function of property over its economic function. However, recognizing rights and claims that go beyond the existing property rights jurisprudence and the liberal legal order on which it is founded will need radical political formulations. Hence, for truly realizing the Right to the Indian City, this idea needs to go beyond its conventional legal moorings and become part of the mainstream political agenda which will enable the notion of law itself to be redefined.